Court to Weigh Extent Of Congress Immunity

By John P. MacKenzie
Washington Post Staff Writer

The Supreme Court agreed yesterday to decide whether the immunity conferred on members of Congress by the Constitution gives partial or total protection against the government's investigation of the publication of Sen. Mike Gravel's edition of the Pentagon papers.

Granting petitions by both the Justice Department and the Alaska Democrat who forced the papers into the open, the court set the stage for another showdown on the rights of federal legislators.

Already held for reargument later this term is the case of former Sen. Daniel B. Brewster (D-Md.), whose claim of immunity from bribery prosecution is vigorously contested by the government.

Both sides are dissatisfied with a lower court decision last month which would permit a Boston grand jury to continue its investigation but would prohibit questioning of the senator's aide who arranged publication by the Beacon Press and require prosecutors to avoid asking about Gravel's motives.

The Constitution says that "for any speech or debate in either house" members of Congress "shall not be questioned in any other place."

Gravel argues that the immunity must be given a generous interpretation to fulfill its aim of advancing the "informing function" of Congress. The Justice Department says a strict construction is in order so that grand juries can guard national security.

Gravel made public portions of the secret Vietnam war history last June just as the Supreme Court was preparing to deliver its 6-to-3 decision sustaining the right of The Washington Post and The New

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York Times to publish copies of the Pentagon papers.

A temporary stay currently is blocking most of the Boston grand jury's actions. Ordinarily the court would have difficulty fitting the hearing into the schedule of the current term, but the Justice Department yesterday was seeking an expedited hearing in March or April in preference to oral argument in the fall.

In another action, new Justices Lewis F Powell Jr. and William H. Rehnquist joined with Chief Justice Burger and Justice Byron R. White in dissent as the court ruled, 5 to 4, that a Georgia prisoner as entitled to a federal court hearing attacking his forgery conviction.

But the deciding vote was cast by Justice Harry A. Blackmun in a rare break from Burger. Blackmun said he cast his vote "only after some hesitation, for there is force in the dissent."

The majority held that Jack Boyd, who has served eight years of a 28-year sentence for four forgeries totalling $140 worth of bad checks, deserved a full airing of his habeas corpus petition complaining of the denial of legal counsel in 1964.

Powell said he found the record adequate to decide the issue against Boyd. He added a protest against "repetitive judicial re-examination" of prisoner claims "which has become so commonplace."

In other action:

The court agreed to decide whether white apartment dwellers in San Francisco have a legal right to sue their landlord over a policy against admitting black tenants.

A lower court held that only prospective black tenants or the U.S. Attorney General have the requisite legal standing for such a suit. But the whites supported by federal housing and Justice Department officials, maintain that they are also "persons aggrieved" by housing bias because of the denial of desegregated living.

Conspiracy

Over the lone dissent of Justice William O. Douglas, the court let stand the conviction of former Mayor Hugh J. Addonizio and other Newark officials for conspiring to reap kickbacks from companies doing business with the city.

Douglas wrote an eight-page dissent contending that the court should disapprove the way most conspiracy prosecutions are conducted. He argued that prosecutors should not be allowed to take unfair advantage of defendants through hearsay evidence and other devices that only a conspiracy case can provide. Addonizio was sentenced to 10 years in prison and a $25,000 fine.

Equal Protection

The court agreed to consider a challenge by three mothers on welfare to New York state's system of subsidizing school textbooks for poor children in grades 7 to 12 but not ensuring that younger pupils receive the same benefits.

Plea Bargaining

The court ignored a petition by James Earl Ray, convicted assassin of the Rev. Martin Luther King Jr., challenging his 99-year prison sentence on grounds that his attorneys tricked him into an unfair bargain over his guilty plea.

Peyote

Over three dissents claiming that Arizona was not enforcing its laws against peyote smoking by members of the Native American Church of Navajoland, the court affirmed and cut off futher appeals from a federal court's ruling that the Indians were not entitled to a charter from the State Corporation Commission.